

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1427-PST-E     TCEQ ID: RN101811883     CASE NO.: 36473**  
**RESPONDENT NAME: HENRY CHENNAULT**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION OCCURRED:</b> Intersection of Highway 87 and Granger Avenue, Westhoff, DeWitt County</p> <p><b>TYPE OF OPERATION:</b> Property with three inactive underground storage tanks</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on March 17, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b> TCEQ Attorney: Ms. Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693                     Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Ross Fife, Waste Enforcement Section, MC 128, (512) 239-2541 TCEQ Regional Contact: Mr. Brad Genzer, Corpus Christi Regional Office, MC R-14, (361) 825-3106 Respondent: Mr. Henry Chennault, P.O. Box 37, Westhoff, Texas 77994 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b>  None</p> <p><b>Date of Investigation Relating to this Case:</b>  July 15, 2008</p> <p><b>Date of NOE Relating to this Case:</b>  August 21, 2008</p> <p><b>Background Facts:</b>  The EDPRP was filed February 2, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on February 4, 2009, as evidenced by the signature on the card. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b>  Not yet in compliance. The Respondent does not have a delivery certificate.</p> <p><b>PST:</b>  Failed to permanently remove from service, no later than sixty days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirement [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p>	<p><b>Total Assessed:</b> \$5,250</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$5,250</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days, permanently remove the UST system from service.</li> <li>2. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision No. 1.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

<b>DATES</b>	Assigned PCW	25-Aug-2008 10-Sep-2008	Screening	4-Sep-2008	EPA Due	
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## RESPONDENT/FACILITY INFORMATION

Respondent	Henry Chennault		
Reg. Ent. Ref. No.	RN101811883		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

## CASE INFORMATION

Enf./Case ID No.	36473	No. of Violations	1
Docket No.	2008-1427-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Ross Fife
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$5,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **Subtotals 2, 3, & 7** \$250

5.0% Enhancement

Notes

Enhancement for one NOV with same or similar violations.

**Culpability**

No

0.0% Enhancement

**Subtotal 4** \$0

Notes

The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments**

**Subtotal 5** \$0

**Economic Benefit**

Total EB Amounts	\$5,189
Approx. Cost of Compliance	\$10,100

0.0% Enhancement\*

\*Capped at the Total EB \$ Amount

**Subtotal 6** \$0

**SUM OF SUBTOTALS 1-7**

**Final Subtotal** \$5,250

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

0.0%

**Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$5,250

**STATUTORY LIMIT ADJUSTMENT**

**Final Assessed Penalty** \$5,250

**DEFERRAL**

0.0%

Reduction

**Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY**

\$5,250

Screening Date 4-Sep-2008

Docket No. 2008-1427-PST-E

PCW

Respondent Henry Chennault

Policy Revision 2 (September 2002)

Case ID No. 36473

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101811883

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Ross Fife

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

<b>Screening Date</b> 4-Sep-2008		<b>Docket No.</b> 2008-1427-PST-E		<b>PCW</b>																
<b>Respondent</b> Henry Chennault		<i>Policy Revision 2 (September 2002)</i>																		
<b>Case ID No.</b> 36473		<i>PCW Revision June 12, 2008</i>																		
<b>Reg. Ent. Reference No.</b> RN101811883																				
<b>Media [Statute]</b> Petroleum Storage Tank																				
<b>Enf. Coordinator</b> Ross Fife																				
<b>Violation Number</b>	<input type="text" value="1"/>																			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.47(a)(2)"/>																			
<b>Violation Description</b>	<div style="border: 1px solid black; padding: 5px;"> <p>Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three underground storage tanks ("USTs") for which any applicable component of the system is not brought into timely compliance with the upgrade requirement.</p> </div>																			
<b>Base Penalty</b>				<input type="text" value="\$10,000"/>																
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>																				
<b>OR</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;"><b>Harm</b></td> </tr> <tr> <td style="text-align: center;"><b>Release</b></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text" value="x"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					<b>Harm</b>			<b>Release</b>	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		<b>Harm</b>																		
	<b>Release</b>	Major	Moderate	Minor																
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>																	
<b>Percent</b>				<input type="text" value="25%"/>																
<b>&gt;&gt; Programmatic Matrix</b>																				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Falsification	Major	Moderate	Minor		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b>	<input type="text" value="0%"/>					
	Falsification	Major	Moderate	Minor																
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>																
<b>Matrix Notes</b>	<div style="border: 1px solid black; padding: 5px;"> <p>Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health and environmental receptors as a result of the violation.</p> </div>																			
<b>Adjustment</b>				<input type="text" value="\$7,500"/>																
				<input type="text" value="\$2,500"/>																
<b>Violation Events</b>																				
<b>Number of Violation Events</b>		<input type="text" value="2"/>	<input type="text" value="51"/>	<b>Number of violation days</b>																
<i>mark only one with an x</i>	daily	<input type="text"/>																		
	monthly	<input type="text" value="x"/>																		
	quarterly	<input type="text"/>																		
	semiannual	<input type="text"/>																		
	annual	<input type="text"/>																		
	single event	<input type="text"/>																		
<p>Two monthly events (one monthly events per UST system) are recommended based on the July 15, 2008 investigation date to the September 4, 2008 screening date.</p>																				
<b>Good Faith Efforts to Comply</b>		<input type="text" value="0.0%"/> Reduction		<input type="text" value="\$0"/>																
		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDRP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td><input type="text" value="x"/></td> <td style="text-align: center;">(mark with x)</td> </tr> </table>			Before NOV	NOV to EDRP/Settlement Offer	Extraordinary	<input type="text"/>	<input type="text"/>	Ordinary	<input type="text"/>	<input type="text"/>	N/A	<input type="text" value="x"/>	(mark with x)					
	Before NOV	NOV to EDRP/Settlement Offer																		
Extraordinary	<input type="text"/>	<input type="text"/>																		
Ordinary	<input type="text"/>	<input type="text"/>																		
N/A	<input type="text" value="x"/>	(mark with x)																		
<b>Notes</b>	<div style="border: 1px solid black; padding: 5px;"> <p>The Respondent does not meet the good faith criteria for this violation.</p> </div>																			
<b>Violation Subtotal</b>				<input type="text" value="\$5,000"/>																
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>																		
<b>Estimated EB Amount</b>		<input type="text" value="\$5,190"/>	<b>Violation Final Penalty Total</b>	<input type="text" value="\$5,250"/>																
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$5,250"/>																

## Economic Benefit Worksheet

**Respondent** Henry Chennault  
**Case ID No.** 38473  
**Reg. Ent. Reference No.** RN101811883  
**Media** Petroleum Storage Tank  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	7-May-2009	10.38	\$5,190	n/a	\$5,190

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. Date Required is the date the upgrade requirement was due. Final Date is the estimated date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$5,190

# Compliance History

Customer/Respondent/Owner-Operator: CN603155318 CHENNAULT, HENRY Classification: AVERAGE Rating: 3.00  
Regulated Entity: RN101811883 J&S SERVICE STATION Classification: AVERAGE Site Rating: 3.00  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 9894  
Location: INTERSECTION OF HWY 87 & GRANGER AVE AT WESTHOFF Rating Date: 9/1/2007 Repeat Violator: NO  
TCEQ Region: REGION 14 - CORPUS CHRISTI  
Date Compliance History Prepared: August 27, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 27, 2003 to August 27, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Ross Fife Phone: 512-239-2541

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 02/22/2007 (534333)  
2 08/21/2008 (688884)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 02/22/2007 (534333)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)  
Description: Failure to perform the permanent removal of a UST system that has not met upgrade requirements.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)  
Description: Failure to amend/update the UST Registration form to reflect the UST ownership change.
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
HENRY CHENNAULT,  
RN101811883**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-1427-PST-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Henry Chennault ("Mr. Chennault").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Mr. Chennault owns property with three inactive underground storage tanks ("USTs") located at the intersection of Highway 87 and Granger Avenue in Westhoff, DeWitt County, Texas (the "Facility").
2. Mr. Chennault's three USTs are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Chennault's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation on July 15, 2008, a TCEQ Corpus Christi Regional Office investigator documented that Mr. Chennault failed to permanently remove from service, no later than sixty days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirement.
4. Mr. Chennault received notice of the violations on or about August 26, 2008.



5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Henry Chennault" (the "EDPRP") in the TCEQ Chief Clerk's office on February 2, 2009.
6. By letter dated February 2, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Chennault with notice of the EDPRP. According to the return receipt "green card," Mr. Chennault received notice of the EDPRP on February 4, 2009, as evidenced by the signature on the card.
7. More than twenty days have elapsed since Mr. Chennault received notice of the EDPRP provided by the Executive Director. Mr. Chennault failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Chennault is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Chennault failed to permanently remove from service, no later than sixty days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirement, in violation of 30 TEX. ADMIN. CODE § 334.47(a)(2).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Chennault with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Chennault failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Chennault and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Chennault for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Chennault is assessed an administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Chennault's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within thirty days after the effective date of this Order and shall be sent with the notation "Re: Henry Chennault; Docket No. 2008-1427-PST-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Mr. Chennault shall undertake the following technical requirements:
  - a. Within thirty days after the effective date of this Order, Mr. Chennault shall permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55.
  - b. Within forty five days after the effective date of this Order, Mr. Chennault shall submit written certification as described below and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a

that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Brad Genzer, Waste Section Manager  
Texas Commission on Environmental Quality  
Corpus Christi Regional Office  
6300 Ocean Drive, Suite 1200  
Corpus Christi, Texas 78412-5503

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Chennault. Mr. Chennault is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Chennault fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Chennault's failure to comply is not a violation of this Order. Mr. Chennault shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Chennault shall notify the Executive Director within seven days after Mr. Chennault becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Chennault shall be made in writing to the Executive Director. Extensions are not effective until Mr. Chennault receives

written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Chennault if the Executive Director determines that Mr. Chennault has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

## AFFIDAVIT OF STEPHANIE J. FRAZEE


STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

“My name is Stephanie J. Frazee. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Henry Chennault” (the “EDPRP”) was filed with the Office of the Chief Clerk on February 2, 2009.

I sent the EDPRP to Mr. Chennault at his last known address on February 2, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Chennault received notice of the EDPRP on February 4, 2009, as evidenced by the signature on the card.

More than twenty days have elapsed since Mr. Chennault received notice of the EDPRP. Mr. Chennault failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

  
\_\_\_\_\_  
Stephanie J. Frazee  
Attorney  
Texas Commission on Environmental Quality

Affidavit of Stephanie J. Frazee  
Page 2

Before me, the undersigned authority, on this day personally appeared Stephanie J. Frazee, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 9th day of March, A.D., 2009.

Notary Stamp

Rochelle D. Collins  
Notary Signature

